IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
At Norfolk.

NICHOLAS KORTHINOS ET AL.

v.

S. S. NIARCHOS ET AL.
In Admiralty No. 7190

MEMORANDUM BY THE COURT
(OPINION)

Pursuant to the remand order of the Court of Appeals, as well as in answer to the "Motion for Summary Judgment" of the libelants, the Court now awards the libelants the sums found to have been advanced to them contrary to the statute, 46 USCA 599. The determination has been submitted to the Court without oral argument. The only evidence offered to the Court for the determination of this remaining issue is the wage accounts of the ten libellants produced in the State court in answer to an interrogatory there. Answer to the interrogatory propounded in this Court on the question of advances has not been pressed, apparently because not needed, and the cause submitted on the wage accounts now in hand.

The Court allows the libelants the following amounts as the balances due on wages after eliminating unlawful advances:

Vassilios Kontoulas

Advanced at Newport News, Va. by way of overpayment on July 1, 1947	$ 63.30
Advanced at Norfolk, November 26, 1947	100.00
	$ 163.30

Nicolas Venieras

Advanced at Newport News, Va. by way of overpayment on July 1, 1947	$ 16.87
Advanced at Norfolk, Va. November 26, 1947	120.00
	$ 136.87

Evangelos Frangakis

Advanced at Norfolk, Va. November 26, 1947	$ 150.00

Fotios Katsikas

No amount has been proven as an advance to this libelant within the United States. The wage account, the only evidence, shows that the sum of $100.00 was made to him as an advance "during the voyage". As will be discussed later, the Court does not consider such an advance to be within the proscription of the statute.

George Lemonis

Advanced at Norfolk, Va. November 26, 1947	$ 100.00

Vasilios Stathis

Advanced at Norfolk, Va. November 26, 1947	$ 100.00

Nicholas Korthinos

Advanced at Newport News, Va. July 1, 1947 by way of overpayment of wages in the sum of	$ 6.35

Stavros Hajitheodoros

Advanced at Norfolk, Va. November 26, 1947	$ 120.00

John Karagiannis

Advanced June 30, 1947 at Newport News, Va. by way of overpayment of wages	$ 70.14
Advanced at Norfolk, Va. Nov. 26, 1947	100.00
	$ 170.14

Theodore Orfanidis

Advanced at Norfolk, Va. November 26, 1947	$ 100.00

These amounts have already been paid to the libelants and there is no further amount due them. No waiting time will be allowed on these amounts for the reasons set forth by the Court of Appeals in its decision of this case. 175 F2d 730, 733. In the opinion of the Court there has been no failure to pay these wages "without sufficient cause". Furthermore, the respondents paid these amounts promptly following the determination of their liability for them.

The Court has eliminated all advances "taken during the voyage" as that item appears on each of the wage accounts. There is no proof that any of them was made within the United States, but the plain showing is that they were made after the vessel left this country. The remittitur confines this Court to an ascertainment of the wages due after eliminating "advances made in the United States".

Motion as to Overtime

A separate motion has been filed on behalf of four of the libelants for overtime in the sum of $4.00 each for the period from March 13 to March 17, 1948. This claim was not included in the remand as an item to be determined by the Court. It is, therefore, not before the Court and for that reason the motion is denied. However, it may be noted that the amount of the claim, without penalties, was paid into Court for the use of the four libelants on May 27, 1948 and thereafter accepted by them.

A final decree dismissing this suit will be entered upon presentation.

(SGD) ALBERT V. BRYAN
United States District Judge

Alexandria, Virginia
April 14, 1950.

Law Offices
VANDEVENTER & BLACK
CITIZENS BANK BUILDING
NORFOLK 10, VIRGINIA
January 18, 1951

Messrs. Morewitz & Morewitz
Attorneys at Law
131 24th Street
Newport News, Virginia

Re: Korthinos, et al. v. Niarchos, et al.

Attention: Mr. Burt M. Morewitz

Gentlemen:

I have been puzzling over the Stipulation which you sent to me as to what shall constitute the record in the Supreme Court for your Petition for Certiorari. As stated over the telephone, I would like to cooperate with you in this matter insofar as eliminating any superfluous material from the record. I find, however, I am unable to sign the Stipulation as submitted.

In the first place, I do not know what you are going to put in your petition, and hence I do not know what parts of the record will be material to my reply. You have listed quite a few pleadings which were involved in the first Petition for Certiorari which you filed. I fail to see what bearing these pleadings will have on your new petition. I therefore do not know whether or not I should include such things as Respondent's Answers to Interrogatories and Answer to the Libel.

Neither can I agree to your Appendix on the second appeal in the Circuit Court of Appeals becoming a part of the record in the Supreme Court. I think that this Appendix is deficient in the following respects:

1. The wage accounts have not been copied in toto and fail to show the settlements appearing at the end.

2. The excerpts from the wage accounts for the voyage ending on January 19th, 1948, are not material to the second appeal. Furthermore, I think it is misleading to extract entries from these accounts and put them in an Appendix. It would probably be proper in a brief, but I think the Appendix should contain copies of the complete account—photostatic copies if possible.

3. I cannot agree to the deposition of Stavros Hadjitheordorou being considered as part of the record, as the Court might consider that the same was in evidence. In your Appendix you quote from this deposition as if the same were in evidence. I think that the only proper way for this deposition to go up is in the form in which it is filed with the Clerk of the Court of Appeals. The Certificate of the District Clerk which is fastened to the copy of this deposition should accompany the same. Since your motion to have the same included in the record was denied by the Circuit Court of Appeals, it should not be printed as a part of the record on appeal.

4. The other pleadings and the letters to the Judge should be printed in toto, as they are misleading in their present form.

5. Finding of Fact No. 6 is not included in the Appendix which you furnished me.

6. Our Appendix is not printed separately and I do not see how it can be sent unless our whole brief goes up.

I have just checked the Stipulation which we used on the first appeal to the Supreme Court, and I note that there the pleadings listed were written up in toto. I think that this should be done in the instant case, rather than to include the excerpts from the same that you have put in your Appendix.

I am still agreeable to a stipulation in this case and sug-

gest that you make up a complete record of what you desire to include in the record, and that the same be submitted to me for approval. In this manner I could check it much quicker. The above changes should be noted, however. It would also help to have a copy of your Petition for Certiorari at the same time in order that I could add to the stipulation in the event that I find it necessary to refer to matters not contained in the Appendix, in order to answer the petition.

Yours very truly,

HUGH S. MEREDITH

HSM/p

MEMORANDUM OF RESPONDENTS IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT

(Submitted February 22, 1950)

I. NO MOTION FOR SUMMARY JUDGMENT CAN BE ENTERTAINED BY AN ADMIRALTY COURT.

The jurisdiction of our Federal Courts to entertain motions for summary judgment exists wholly by reason of Rule 56 of the Federal Rules of Civil Procedure, and it is an accepted fact that these rules have no application to admiralty proceedings. This is pointed out in Benedict on Admiralty, Sixth Edition, Volume II, at page 47:

> "Admiralty does not employ . . . the summary judgment . . . as those proceedings are set forth in the Civil Rules."

While respondents object to the court's entertaining these motions for summary judgment, they have no objection to

the subject of these motions being disposed of by the court without further oral argument, and it appears from their letter of January 11th that the libellants have no objection to this procedure being followed.

II. THERE IS NOTHING FURTHER DUE THE LIBELLANTS.

The Court of Appeals remanded this case "with direction to award the balance due on the wages of such voyages (prior voyages), when advances made in the United States contrary to law are eliminated." The wage accounts covering these prior voyages are now before this court. They were sent to the Clerk of the Court of Appeals by the Clerk of the Circuit Court for the City of Newport News and have now been forwarded to the Clerk of this court. Practically all of these accounts are written in the English language but a few are written in Greek. We are attaching hereto translations of those that are written in Greek. Opposing counsel are being furnished with photostatic copies of these translations. Libellants have taken no testimony as to advances even though ample opportunity existed when the case was first heard on the merits; instead they have elected to rely on the admissions contained in these accounts.

An examination of these accounts will disclose that the advances were of two different types. One type was made at the "beginning of the voyage," and the other type was made "during the voyage." Conceding that a new voyage began each time that the vessel visited the United States, the only advances which were made contrary to law were those which were made at that time. These advances are listed as having been made at the "beginning of voyage." The advances listed as having been made "during the voyage" could not possibly have been made in the United States,

since the voyages were all foreign voyages. An examination of these accounts discloses advances on future earnings as follows:

KORTHINOS—This libellant joined the vessel at the port of Glasgow, Scotland, on June 9, 1947. His first account shows that it was settled at Newport News on June 30, 1947, at which time he was paid $6.35 more than was due him. This payment, therefore, amounted to an advance on future earnings. An examination of his subsequent accounts fails to disclose any other advances as having been made in the United States.

FRANGAKIS—An examination of the accounts of this libellant discloses that the only advance which was made in the United States was the sum of $120.00 which was paid at Norfolk on November 26, 1947.

KARAGIANNIS—This libellant joined the vessel at the port of Glasgow, Scotland, on June 9, 1947. His first account shows that it was settled at Newport News on June 30, 1947, at which time he was paid $70.14 more than was due him. The only other advance made in the United States was the sum of $100.00 which was paid in Norfolk on November 26, 1947. These advances total $170.14.

STATHIS—An examination of the accounts of this libellant discloses that he received only one advance in the United States. This advance was made at Norfolk, on November 26, 1947, in the sum of $100.00.

LEMONIS—An examination of the accounts of this libellant discloses that he received only one advance in the United States. This advance was made at Norfolk on November 26, 1947, in the sum of $100.00.

ORFANIDIS—An examination of the accounts of this man shows that he received only one advance in the United States. This advance was made at Norfolk, on November 26, 1947, in the sum of $100.00.

KONTOULAS—An examination of the accounts of this libellant shows that he joined the vessel at Glasgow, Scotland, on June 9, 1947, and that on arrival of the vessel at Newport News, on June 30th, 1947, he was paid $63.30 in excess of his wages then due. This excess constituted an advance on future earnings. The only other advance which appears to have been made in the United States was the sum of $100.00 which was made at Norfolk on November 26, 1947. His total advances therefore amount to $163.30.

VENIERIS—An examination of the accounts of this libellant discloses that he received only one advance in the United States, the same having been made at Norfolk, on November 26, 1947, in the sum of $120.00.

HAJITHEODOROU—An examination of the accounts of this libellant discloses that he received only one advance in the United States, the same having been made at Norfolk, Virginia, on November 26, 1947, in the sum of $120.00.

The mandate of the Court of Appeals was received by the Clerk of the District Court on December 10, 1949. Shortly thereafter the exhibits were returned to the District Court but an examination of them disclosed that the disputed wage accounts were not among them. We then contacted the Clerk of the United States Court of Appeals and at our request he sent these accounts to the Clerk of the District Court so that they would be available to both parties. Upon receipt of these accounts in the Clerk's office, we made a careful examination of them, and after ascertaining just when ad-

vances had been made in the United States, we recommended to the owner of the s/s CAPTAIN K. PAPAZOGLOU that these advances be deposited in court to the credit of the libellants, thus complying with the mandate of the Court of Appeals. This deposit was made on January 25th, and on January 26th, we mailed to your honor an order paying out the same to Morewitz and Morewitz, as attorneys for the libellants. Shortly thereafter, this order was entered.

It is submitted that respondents, by making this deposit, have fully complied with the mandate of the Court of Appeals and that nothing further remains to be done in this case except the entry of a final decree. The question of penalties on these advances which is raised by libellants in their motion for summary judgment was disposed of adversely to the libellants by the Court of Appeals. Furthermore it is clear from the record that respondents have acted with the greatest of dispatch in carrying out the mandate of the Court of Appeals.

III. The Sixteen Dollar Deposit.

In the early stages of these proceedings, on May 27, 1948, respondents deposited in the registry of this court, the sum of $16.00, representing certain sums which, according to certain amended pay accounts filed on that date, appeared to be due certain of the libellants. The libellants never thereafter applied for the payment of these sums but when the case went to the Court of Appeals they argued that they were entitled to "penalties" thereon. The Court of Appeals held against their contention, however, and found that no wages were due other than those that appeared to be due by reason of advances on prior voyages. Full credit was given to the respondents for the deposits of wages that they had made. Even after the case was remanded to the District

Court, libellants still made no application for this deposit. This was called to our attention by the Clerk on February 6th, 1950, whereupon, on February 7, 1950 we sent to your honor a court order paying over this sum to Morewitz and Morewitz, as attorneys, in order that the case might be in order for final disposition. It is further submitted that the question of penalties, insofar as this deposit is concerned, was fully disposed of by the Court of Appeals which affirmed the decision of the District Court in all respects except that involving the claims for advances on prior voyages.

Respectfully submitted,

VANDEVENTER AND BLACK
By HUGH S. MEREDITH
Proctors for Respondents.